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7 And Spectrum Financial Group

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:

11 USA COMMERCIAL MORTGAGE COMPANY
Debtor.

Bankruptcy No. BK-S-06-10725-LBR

12 In re:

13 USA CAPITAL REALTY ADVISORS, LLC
Debtor.

Bankruptcy No. BK-S-06-10726-LBR

Bankruptcy No. BK-S-06-10727-LBR

Bankruptcy No. BK-S-06-10728-LBR

15 In re:

16 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC
Debtor.

(Jointly Administered)
Chapter 11

18 In re:

19 USA CAPITAL FIRST TRUST DEED FUND, LLC
Debtor.

**DECLARATION OF ROLLAND P.
WEDDELL IN SUPPORT OF HIS
PROOF OF CLAIM**

20 In re:

21 USA SECURITIES, LLC

Debtor.

23 I, ROLLAND P. WEDDELL hereby declare under penalty of perjury as follows:

24 1. I am a creditor in the bankruptcy of USA Commercial Mortgage Company ("USA"). I
make this affidavit upon personal knowledge except as otherwise stated, and would be competent to
testify to the matters stated herein.

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1 2. In January of 2000, Robert and Cheryl Porter, Spectrum, and I formed Principle
2 Centered, Inc. ("PCI") to take over and develop ongoing projects other than the View that previously
3 were owned and being developed by the Porters' company, American Communities.

4 3. In order to continue to develop these projects, PCI needed to renegotiate the terms of
5 American Communities' debts with USA, consisting of loans relating to the Harmony, Imagination
6 (also called Somerset), and Inspiration (also called Green Valley Ranch) projects, the American
7 Communities Working Capital Loan (which was subordinated loan secured by all of these projects),
8 and the Housing Partners Loan (a purported loan by USA's affiliate, Housing Partners, LLC, to
9 American Communities that was unsecured). Thus, a Debt Restructuring Agreement was entered on
10 April 21, 2000 to accomplish this (the "Debt Restructuring Agreement"). *See* the Debt Restructuring
11 Agreement, attached hereto as **Exhibit "1"**.

12 4. The parties to the Debt Restructuring Agreement include, *inter alia*, American
13 Communities, the Porters, PCI, Spectrum, USA, Housing Partners, and I.

14 5. Included in the loans addressed in the Debt Restructuring Agreement were three loans
15 to American Communities originally brokered by USA that contained exit fee provisions (the
16 "Mezzanine Loans") whereby, at the sole discretion of the lender(s), American Communities was to
17 pay a specified amount as an exit fee to USA upon the sale of each lot on the project.

18 6. Although USA brokered the Mezzanine Loans between American Communities and the
19 various loan beneficiaries, USA was not nor has it ever been a party to any of these three loans or any
20 of the loan documents related thereto.

21 7. American Communities and the beneficiaries of the Mezzanine Loans contracted to
22 preclude any other person or entity from having any rights of any nature under the respective loan
23 agreements.

24 8. On April 24, 2000, as a condition to execution of the Debt Restructuring Agreement,
25 the beneficiaries of the Harmony Second, with USA acting as their attorney-in-fact and drafting all
26 appropriate documents, assigned to Tom Gonzales ("Gonzales") 100% of their interest in the Deed of
27 Trust, "the same being the entire interest in the Deed of Trust," together with all agreements executed
28

1 in connection with the loan secured by the Deed of Trust, including the Loan Agreement, the
2 Promissory Note and the Guaranty.

3 9. On April 27, 2000, as a condition to execution of the Debt Restructuring Agreement,
4 the beneficiaries of the Green Valley Ranch Second, with USA drafting all appropriate documents,
5 assigned to USA, which assigned to Housing Partners, which assigned to Gonzales 100% of their
6 interest in the Deed of Trust, "the same being the entire interest in the Deed of Trust," together with all
7 agreements executed in connection with the loan secured by the Deed of Trust, including the Loan
8 Agreement and the Promissory Note.

9 10. On April 27, 2000, as a condition to execution of the Debt Restructuring Agreement,
10 the beneficiary of the Somerset Second, with USA acting as his attorney-in-fact and drafting all
11 appropriate documents, assigned to Cindy Barden ("Barden") 100% of his interest in the Deed of
12 Trust, "the same being the entire interest in the Deed of Trust," together with all agreements executed
13 in connection with the loan secured by the Deed of Trust, including the Loan Agreement and the
14 Promissory Note.

15 11. As the assignee of the beneficiaries of the Harmony Second and the Green Valley
16 Ranch Second, Gonzales held the sole power and discretion to enforce the provisions of those Deeds
17 of Trust, including payment of the exit fees to USA.

18 12. As the assignee of the beneficiary of the Somerset Second, Barden held the sole power
19 and discretion to enforce the provisions of that Deed of Trust, including payment of the exit fees to
20 USA.

21 13. Gonzales and Barden did not enforce the exit fee provisions contained in the Mezzanine
22 Loans on any future lot sales.

23 14. On September 11, 2000, Gonzales amended the Deed of Trust for the Harmony Second
24 to eliminate the exit fee provisions.

25 15. Both Gonzales and Barden expressed their willingness to amend the Deeds of Trust for
26 the Green Valley Ranch Second and the Somerset Second to eliminate the exit fee provisions in those
27 loans.

1 16. The Debt Restructuring Agreement, to which USA is a party, defines the term "Lender"
2 to include, *inter alia*, "any person or legal entity who holds a beneficial interest in any deed of trust
3 securing any of the Loans [affected by this Agreement]." *See Exhibit 1.*

4 17. In addressing the purchase of the Mezzanine Loans by Gonzales and Barden, the Debt
5 Restructuring Agreement states that the purchasers "shall receive an assignment of beneficial interest
6 in deed of trust *[sic]* and an assignment of the note and of all the loan documents evidencing the loan.
7 The parties understand that the purchasers aforesaid do not wish to pay off the loans, but to acquire the
8 current Lenders' right, title, and interest in and to them." *See Exhibit 1.*

9 18. Thus, the parties to the Debt Restructuring Agreement, including USA, agreed that the
10 intent was to transfer all beneficial interest in the deeds of trust securing the Mezzanine Loans, and all
11 rights in connection therewith, to Gonzales and Barden.

12 19. Nevertheless, after entering the Debt Restructuring Agreement and related agreements,
13 USA made demand on the escrow company closing sales of homes by Harmony to homebuyers to pay
14 exit fees to USA out of the sale proceeds.

15 20. PCI informed USA that it no longer had any rights or interest with respect to the
16 Mezzanine Loans and thus no right to make a claim for exit fees.

17 21. USA then initiated litigation in the Eighth Judicial District Court claiming its right to
18 the exit fees, and naming the Porters, the escrow company, and the homebuyers as defendants.

19 22. Additionally, USA obtained an *ex parte* prejudgment writ of attachment against any
20 escrow funds for sales of homes and recorded a *lis pendens* against the properties, including the homes
21 already purchased by the innocent homeowners. After the defendants filed a motion to expunge the *lis*
22 *pendens* and to discharge the writ of attachment, the court agreed and reversed these forms of relief
23 that USA had obtained.

24 23. However, in the interim, USA had badly damaged PCI's reputation with the escrow
25 companies and the homebuyers in the Harmony community, as word spread that they had been sued
26 and their title impaired.

27 24. I am informed and believe that on August 16, 1999, American Communities, as the
28 borrower, and Sterling USA, Inc., formerly known as Samoth USA, Inc. ("Sterling"), as the

1 beneficiary and lender, with USA as lender's agent for Sterling, entered into a Construction Loan
2 Agreement, under which Sterling loaned American Communities \$1,635,000.00 for development of
3 the lots in its Somerset project (also known as Imagination).

4 25. In connection with the Construction Loan Agreement, American Communities executed
5 a Promissory Note Secured by Deed of Trust dated August 16, 1999 (the "Sterling Promissory Note").

6 26. Pursuant to Paragraph 3 of the Sterling Promissory Note, the principal balance and all
7 accrued and unpaid interest were due on the Maturity Date, defined as one year after the date on which
8 the deed of trust securing the Note was recorded.

9 27. Based on review of the documents, I am aware that the Deed of Trust, Assignment of
10 Rents, Security Agreement and Fixture Filing dated August 16, 1999, which secures the Sterling
11 Promissory Note (the "Somerset First"), was recorded on August 19, 1999.

12 28. The Maturity Date for the Sterling Promissory Note was thus August 19, 2000.

13 29. Pursuant to the Debt Restructuring Agreement, USA, as lender's agent for Sterling,
14 agreed as follows with respect to the Somerset First: "USA shall extend the loan when it comes due for
15 one year (until on or about August 16, 2001), in accordance with the terms of the Loan Documents. If
16 necessary, USA shall extend the loan for an additional period, up to April 1, 2002." *See Exhibit 1.*

17 30. Sterling received substantial consideration in exchange for this agreement, in the form
18 of an assumption fee of 1% of the construction loan principal, additional guarantors for the
19 construction loan, and having the construction loan brought current. The additional guarantors were
20 PCI, Weddell, and Spectrum. *See Exhibit 1.*

21 31. On or about April 21, 2000, as contemplated and required by the Debt Restructuring
22 Agreement, Imagination, a wholly owned subsidiary of PCI, assumed the Somerset First.

23 32. Beginning April 21, 2000, the monthly interest payments required by the construction
24 loan documents were paid to USA, in accordance with the terms of the above-described agreements.

25 33. On or about September 19, 2000, Sterling recorded a Notice of Breach and Election to
26 Sell (the "Notice of Default") in Book 20000919, as Instrument No. 01352 of the official records of
27 the Recorder of Clark County, Nevada.

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1 34. The Notice of Default asserted that Imagination was in default under the Somerset First
2 as a result of failure to pay the full principal amount of the construction loan on the asserted maturity
3 date of August 20, 2000.

4 35. Sterling also notified others with whom American Communities, PCI, and Imagination,
5 as well as the Guarantors, do business, that American Communities and Imagination were in default
6 under the construction loan, which statement was false.

7 36. Sterling instructed Nevada Construction Services to suspend all disbursements of the
8 construction loan and remit to it all funds then held by Nevada Construction Services in its control
9 disbursement account, thus holding up payments to subcontractors who worked on the construction
10 project being funded with the construction loan.

11 37. A lender with whom PCI was discussing potential financing of several PCI projects
12 learned of the Notice of Default, which had not been disclosed by PCI because they were unaware of
13 any default (because there was no such default). Thereafter, this lender provided only one limited loan
14 and was not interested in providing any further financing to PCI.

15 38. Imagination notified USA and Sterling of the impropriety of their actions in light of
16 their express agreement in the Debt Restructuring Agreement to extend the Maturity Date for the
17 Somerset First until at least August 16, 2001 and, thus, that the amounts claimed to be in default were
18 not yet due.

19 39. Instead, USA and Sterling informed American Communities that it would extend the
20 construction loan only if certain additional fees and costs not contemplated by the Debt Restructuring
21 Agreement were paid, pursuant to USA's "normal terms and conditions," and also that Imagination
22 pay the foreclosure costs and penalties incurred by Sterling in its wrongful and inappropriate
23 institution of foreclosure proceedings.

24 40. Additionally, I understand that Hantges informed Bill Schilz that USA was aware of its
25 obligation to extend the construction loan but would continue to refuse to do so unless PCI and
26 Imagination helped USA regarding the View Loans, which were in default. However, PCI and
27 Imagination had no obligation regarding the View loans, and had no ownership interest in American
28 Black Mountain, the borrower under those loans and owner of the View project.

1 41. Although USA signed the Debt Restructuring Agreement on behalf of Sterling, USA
2 never informed Sterling about the existence of the Debt Restructuring Agreement or that Sterling had
3 any obligation to extend the construction loan, thus leading to the recording of the notice of default by
4 Sterling.

5 42. Because of the improper refusal of USA and Sterling to extend the construction loan as
6 promised, American Communities, Imagination, the Porters, PCI, Weddell and Spectrum were forced
7 to file suit against USA and Sterling in the District Court, Clark County, Nevada.

8 43. As a result of the litigation initiated by the plaintiffs against USA and Sterling, USA
9 purchased the loan from Sterling and paid Sterling a substantial amount of default interest and related
10 foreclosure fees because Sterling incorrectly insisted that the loan was in default.

11 44. Upon purchase of the loan, becoming the beneficiary of the Somerset First, USA
12 rescinded the Notice of Default filed by Sterling but then claimed that PCI was responsible for the
13 improper default fees charged by Sterling which occurred due to USA's failure to inform Sterling
14 about its obligation to extend the construction loan. USA asserts, without support, that PCI was
15 obligated to inform USA that it needed the extension, although the Debt Restructuring Agreement
16 contains no such requirement, and indicates that USA bore an obligation to extend the loan.

17 45. As a result of the actions of USA and Sterling with respect to the improper recording of
18 a NOD and pursuit of foreclosure, as well as initiation of the litigation over the exit fees and recording
19 a writ of attachment and *lis pendens* with respect thereto, USA interfered with the business and
20 reputation of Spectrum, Weddell, and PCI and its subsidiaries.

21 46. I am informed and believe that on November 30, 1999, USA brokered a loan between
22 American Communities, as the borrower, and the Green Valley Ranch Beneficiaries as the
23 beneficiaries and/or lenders, for the acquisition and development of the Inspiration project, with the
24 loan known as the Green Valley Ranch First.

25 47. As part of the Debt Restructuring Agreement, USA agreed to advance additional
26 development funds for the Inspiration project by expanding or replacing the Green Valley Ranch First.
27 In addition, Inspiration assumed the Green Valley Ranch First.

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1 48. USA failed to honor its obligation under the Debt Restructuring Agreement to advance
2 the additional development funds for Inspiration, even though PCI requested that they do so.

3 49. These multiple breaches of the Debt Restructuring Agreement by USA so soon after
4 entering that agreement and at a time when PCI was working on turning around the construction
5 projects to be profitable caused substantial damage to PCI and ultimately kept it from being successful.
6 We were unable to obtain financing at rates that would reasonably allow PCI to be profitable and have
7 adequate cash flow to continue to develop its projects.

8 50. Ultimately, PCI and its subsidiaries were forced to seek bankruptcy protection in the
9 spring of 2001, which bankruptcy was later converted to a Chapter 7 liquidation. In the context of the
10 bankruptcy proceedings, Spectrum purchased the claims of PCI and its subsidiaries against USA for
11 damages resulting from USA's actions. Attached hereto as **Exhibit "2"** is the Order from the
12 Bankruptcy Court authorizing Spectrum to purchase the claims of PCI and its subsidiaries.

13 51. PCI and its subsidiaries lost everything, rather than being the successful profitable
14 venture it would have been were it not for USA's improper and bad faith actions in the months
15 following the Debt Restructuring Agreement. Attached hereto as **Exhibit "3"** are pro formas prepared
16 by PCI based on having entered the Debt Restructuring Agreement and anticipating moving forward
17 smoothly thereunder, demonstrating the profits that would have been made from the PCI subsidiary
18 ventures if it was not for USA's breaches.

19 52. In addition, PCI, Spectrum, and I agreed to guarantee the Harmony First, Green Valley
20 Ranch First, and Somerset First, as well as the American Communities Working Capital Loan in
21 connection with the Debt Restructuring Agreement, and we have been sued based on these loan
22 guarantees.

23 53. PCI, Spectrum, and I would not have agreed to these guarantees had we known that
24 USA would later fail to comply with numerous obligations undertaken in connection with the Debt
25 Restructuring Agreement, and thus we should not be bound by the guarantees.

26 54. Based on the entering of the Debt Restructuring Agreement, which was necessary for
27 PCI to be viable and profitable, Spectrum and I loaned monies to PCI, Destination II, Enchantment II,
28 Harmony II, Imagination and Inspiration, jointly and severally, from April 2000 through December

1 2000, in the collective amount of \$9,500,000.00. The loans from Spectrum and me were used by PCI
2 and each of its subsidiaries to pay interest on construction loans, provide working capital for PCI and
3 its five (5) subsidiaries and to pay subcontractors, suppliers and material men for work done on some
4 or all of the projects owned by PCI's five (5) subsidiaries, including but not limited to the Harmony
5 project, the Imagination (Somerset) project and the Inspiration (Green Valley Ranch) project.
6 Attached hereto as **Exhibit "4"** is a copy of the note from PCI to me for the money I loaned. Attached
7 hereto as **Exhibit "5"** is a copy of a ledger for each of the advances comprising the total loan amount.

8 55. My Proof of Claim seeks damages for USA's bad faith and fraudulent actions and its
9 breaches of contract. This including my loans to PCI and its subsidiaries of \$2,907,932.51. See
10 Exhibit 5. My Proof of Claim also includes \$10,173,067 for interest and punitive treble damages.

11
12 DATED this 10th day of January, 2007.

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14 I do hereby swear under penalty of perjury that
15 the foregoing assertions contained in this
16 Declaration are true and correct. I am aware that
17 if any statements made by me herein are willfully
18 false, I am subject to punishment.

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ROLAND P. WEDDELL

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